

**Chesapeake Bay Local Assistance Board
Northern Area Review Committee
Tuesday, October 25, 2005 – 10:00 a.m.
101 N. 14th St. – James Monroe Building
Richmond, Virginia**

Northern Area Review Committee Members Present

Donald W. Davis, Chair
David L. Bulova
William E. Duncanson
Walter J. Sheffield

DCR Staff Present

Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
Shawn Smith, Principal Environmental Planner
Heather Mackey, Senior Environmental Planner
Beth Baldwin, Senior Environmental Planner
Christine Watlington, Policy, Planning and Budget Analyst
Lee Hill, Assistant Director, Stormwater Management Programs
Michael R. Fletcher, Director of Development

Local Government Representatives Present

Mathews County
Rodney Rhodes, Deputy County Administrator

Richmond County
Chris Jett, Planning Director

Call to Order and Opening Remarks

Mr. Davis called the meeting to order and asked for the roll call. A quorum was declared present.

Ms. Salvati recognized Lee Hill, director of DCR's stormwater management program.

Ms. Salvati noted that the meeting of the Policy Committee had been postponed. She said that staff continued to work on the issues of concern and hoped to prepare a full agenda and provide as much information as possible at the next meeting.

Ms. Salvati said that DCR is forming a small working group to discuss the issue of perennial flow determinations. She said that one of the allowable protocols is the use of

photo documentation. There is an issue with Fairfax County where the County is allowing the use of photo documentation to declassify a stream that has been classified using a more rigorous determination method.

Ms. Salvati said that staff did not believe this interpretation was consistent with the discussion of the ad hoc committee. The ad hoc committee allowed the photo documentation and considered it equal, but not preferable to other determination methods.

Mr. Davis said that his recollection was that the ad hoc committee discussed the issue and agreed that various protocols could be used, but that varying protocols did not necessarily outweigh the others.

Ms. Salvati said that staff had been receiving questions concerning wetlands adjacent or contiguous with RPAs. She said that in the case of wetlands, the RPA would begin at the boundary of the wetland. She noted that there is some dispute in the field between locality staff and the consultants.

The ad hoc committee previously discussed this, but the guidance did not move forward. The ad hoc committee will discuss this again and draft guidance will be developed. The discussions will include wetlands consultants and VIMS.

Also the ad hoc committee will discuss the determination of perennial flow. During years of normal precipitation there will be times of drought when streams that are legitimately perennial will be dry. The committee will discuss options for dealing with these determinations.

Mr. Davis asked Ms. Smith about the issue. He said he thought the ad hoc committee had fully discussed and moved forward.

Ms. Smith said that the guidance document was pulled before it was approved before it made it to the final stage. She said that her recollection was that the issue was presented as informational and that staff would move the document through the approval process. However, the ad hoc committee decided to withdraw the document because of the associated controversy.

Mr. Davis asked Ms. Smith to research the issue and what had previously happened. He noted that he recalled that Ms. Smith had previously made a presentation to the Board on the issue.

Ms. Smith agreed to follow up regarding that presentation.

Ms. Salvati said that the workshop for localities is scheduled for November 3. Members should have received an invitation.

Ms. Salvati said that DCR has held the first of two green infrastructure sessions. The second one is scheduled for November 9 at Rappahannock Community College.

Mr. Davis thanked Mr. Hill for attending.

Mr. Bulova asked the status of the stormwater management regulations.

Mr. Hill said that the Notices of Intended Regulatory Action (NOIRAs) were being prepared for the Secretary and Governor to review.

Ms. Watlington said that the target date for publication is November 28 with a backup date of December 12. That will begin the comment period, which will be extended for 60 days.

Mr. Bulova asked how staff was working with localities with regard to the July 2006 deadline.

Mr. Hill said that there is a draft proposal being developed that would allow the General Assembly to modify the deadline. DCR must have approval from EPA to delegate the authority to localities.

Local Program Reviews: Phase I

Matthews County

Ms. Miller presented the report for Matthews County. She recognized Rodney Rhodes, Deputy County Administrator for Matthews County.

On June 21, 2004 the Board found the County's revised Phase I program consistent, subject to the condition that the County revise the CBPA Overlay District to address two conditions and established September 30, 2005 as the deadline. The two conditions related to limiting roadways allowed by right in the Resource Protection Area (RPA) to those which meet the conditions as specified in the Regulations, and requiring that exception requests to locate accessory uses in the RPA be addressed through a formal exception process. County staff have worked closely with Department staff to address these two conditions, however, the County failed to adopt the revisions by the deadline.

Ms. Miller said that, based on the Board's resolution of June 21st, staff recommended that the County be found inconsistent with the Act and the Regulations and be given a final compliance deadline of December 31, 2005 to complete the recommendations contained in the staff report.

The County Planning Commission voted 6-1 to recommend adoption of the revisions to the County Board on September 20, 2005, however the Board tabled the request at its September 27, 2005 meeting. The County Board will resume consideration of the matter

at its regularly scheduled meeting today, October 25, 2005, at 1 pm. Should the Board of Supervisors adopt the revisions at the meeting, the staff report will be revised accordingly and presented to CBLAB's meeting of December 12th.

Mr. Davis recognized Mr. Rhodes.

Mr. Rhodes thanked the Board for the opportunity to address the concerns. He said that the Chesapeake Bay was an integral part of the heritage of Mathews County. Staff recommended the revisions and the Planning Commission had voted in favor of the revisions. However the Board of Supervisors has not approved the revisions. The Board of Supervisors has requested documentation that the requested measures are improving the quality of the Chesapeake Bay.

Mr. Davis asked if Mr. Rhodes thought the Board would take action. Mr. Rhodes said that he could not predict the Board response, but note that they would also have the opportunity to address the issue at their November meeting.

Ms. Salvati asked if the Board of Supervisors was looking at the overall impact of the Bay regulations or specific recommendations from staff.

Mr. Rhodes said the Board was considering both. The Board desires to know if the condition of the Bay has improved in the 15 years since the implementation of the Act and seeks evidence that water quality has improved.

Mr. Bulova asked why staff was so late in the process identifying concerns.

Mr. Rhodes said the County held two public hearings last year. The Board adopted most of the changes. The Planning Commission specifically omitted the issue of accessory structures at that time. The County has been working with the revised deadline of September 30, 2005.

Mr. Sheffield said that the issue was not just how things have improved for the Bay, but how much worse conditions would be without the actions of the Board. He said that the Chesapeake Bay Local Assistance Board welcomes positive comments, but that they need assistance from the local boards.

Ms. Salvati asked if Mr. Rhodes felt the Board of Supervisors understood that by requiring the Resource Protection Areas and RMA requirements that the effect was to reduce pollutants that would have otherwise gone into the Bay.

Mr. Rhodes said that the Board members perceive an inequity between Mathews County and the Hampton Roads area. They believe that the rural counties are being treated unfairly.

Ms. Salvati asked if it would be beneficial if she, Mr. Maroon and DCR staff met with the Board members to answer questions and address the issues.

Mr. Rhodes said he believed the Board would be receptive to such a meeting.

Mr. Davis asked if staff was making the recommendation of inconsistency on these two issues.

Ms. Miller said that there is not a lot of latitude with regard to the enforcement of the ordinance and the structure of the resolution.

Mr. Sheffield asked if County staff had been cooperative.

Ms. Miller said that yes, staff had worked hard to help Planning Commission members and Board members understand the difference in the language.

Mr. Bulova asked if the December 31, 2005 deadline was too far out. He suggested a deadline of November 30, 2005.

Mr. Davis agreed.

MOTION: Mr. Bulova moved that the Northern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the Mathews County program be found inconsistent with § 10.1-2109 of the Act and § 9 VAC 10-20-50 1 and 2 of the Regulations and further that the County undertake and complete the two recommendations in the staff report no later than November 30, 2005.

SECOND: Mr. Sheffield

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Davis asked Ms. Miller to provide information to Board members prior to the November 30, 2005 deadline.

Local Program Reviews – Compliance Evaluation

Richmond County – Review of previous conditions

Ms. Baldwin presented the report for Richmond County. She recognized Chris Jett, Planning Director.

In early spring of 2005, Department staff reviewed the County's Phase I program to determine whether the County had adequately addressed the four conditions arising from the compliance evaluation conducted in the Fall of 2003. During the review, Department staff noted that only two conditions had been met. On June 20, 2005, the Board adopted a resolution that required Richmond County to complete the two outstanding conditions of its compliance evaluation by July 15, 2005.

The first condition was for the County to begin requiring submission of WQIAs. Richmond County met this condition by drafting its own WQIA forms to address the various types of buffer encroachments (water-dependent, single family home, roads and driveways, etc.). These forms were reviewed by Department staff and found to be more than adequate.

The second condition pertained to ensuring that WQIAs are included as part of the file for any development activities in the RPA or in the RMA when required by the Director of Planning. At this time, one WQIA has been submitted. Richmond County staff will ensure that this WQIA as well as other such documentation will be included in the files.

Ms. Baldwin said that, since all conditions have been met, staff opinion was that Richmond County be found fully compliant with the Act and the Regulations.

Mr. Davis recognized Mr. Jett.

Mr. Jett thanked the Board and staff for their assistance. He said the County did have the forms in place. He said that there were a relatively small number of projects and therefore a low number of submissions.

Mr. Davis said that most localities were finding the forms not difficult to complete.

MOTION: Mr. Bulova moved that the Northern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that Richmond County's implementation of its Phase I program be found compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Sheffield

DISCUSSION: None

VOTE: Motion carried with Mr. Duncanson abstaining

Fairfax County – Initial Compliance Evaluation

Ms. Salvati said that an issue that arisen in Fairfax County. The County is making amendments to their facilities manual to address the classification of streams.

Ms. Salvati said that, due to this concern, staff had pulled this item from the agenda until after a meeting with Fairfax County scheduled for Friday, October 28.

Mr. Bulova asked what the other issues with the County program would be.

Ms. Mackey said that there were some minor issues concerning the auditing of the maintenance agreement for BMPs. She noted that the biggest issue of concern was that of perennial flow. There were minor issues with regard to stormwater and the WQIA submission process.

Mr. Davis asked if there were other concerns.

Ms. Salvati said that one particular subdivision had concern with regard to the declassification of streams. The concern is that the County has a particularly strong system for stream classification and that the County spent \$.75 million to classify streams. The Board has approved the County map.

She noted that the procedure they are currently using to declassify streams leaves a lot of room for concern. She noted that there is already a protocol in place that allows for photo documentation but not as a replacement for other classification procedures.

Middlesex County – Initial Compliance Evaluation

Ms. Miller gave the report for Middlesex County. No one from Middlesex County was present.

Beginning in April 2005, the Department conducted a compliance evaluation of Middlesex County's implementation of it's Phase I program, meeting with County staff on a number of occasions to complete the required checklist, review site plan files and conduct site visits. Seventeen project files were reviewed and seven of these were selected for site visits. Project types included: exceptions; water dependent facilities; shoreline erosion control projects; and, residential nonconforming pre-1989 lot development. These development types represent the typical development occurring in the County. Middlesex County is currently experiencing moderate growth, and most development is residential or related to residential lots, such as shoreline erosion control projects. Recent development proposals reflect an emerging trend toward larger subdivisions and an increased pace in residential development, particularly along the shorelines.

While the evaluation revealed that the County is striving to implement an effective local Bay Act program, there are 8 recommendations that must be addressed for full compliance. Areas that must be addressed include: file management/maintenance;

implementation of the septic system pump-out notification and enforcement program; implementation of the stormwater management requirements; ensuring BMP review and inspection, and requiring maintenance agreements; ensuring WQIAs are submitted when required and ensuring complete plan of development elements, mitigation plans, etc.; and finally, requiring all new plats to show RPA limits.

The County has already begun to address some of these recommendations, and staff will continue to work with the County to help them with the remaining conditions. However, at this time, staff recommends that the Board find that certain aspects of the County's implementation of its Phase I program do not fully comply and further that Middlesex County undertake and complete the eight recommendations in the staff report no later than September 30, 2006.

Ms. Miller said that while the County's Planning Director, Matt Higgins, was unable to attend the Review Committee meeting, the Department received a letter from him regarding the draft staff report. Staff will review the letter, make any appropriate revisions in the staff report and advise the Board regarding any changes.

Mr. Bulova asked about the content of the letter.

Ms. Miller said that she had not had time to thoroughly review the letter, but that there were concerns addressed with each of the issues. She noted that staff did not find complete documentation regarding completed WQIAs. They have incorporated some of the elements, but the forms are not complete.

Ms. Smith said there were no engineers on the County staff. They are basically doing no stormwater review.

Mr. Davis asked why the date was set so far in the future.

Ms. Miller said that it takes time for localities to implement the septic pump out system. Gloucester and Richmond counties were given similar deadlines.

Mr. Sheffield suggested that a progress letter could be provided for the Board summer meetings.

Ms. Smith said that staff is now doing that six months prior to deadline as a matter of form.

Mr. Bulova asked that any update be provided in Board packages.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of Middlesex County's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC

10-20-231 and 250 of the Regulations and further that Middlesex County undertake and complete the eight recommendations contained in the staff report no later than December 31, 2006.

SECOND: Mr. Sheffield

DISCUSSION: None

VOTE: Motion carried unanimously

Spotsylvania County – Initial Compliance Evaluation

Ms. Salvati gave the report on Spotsylvania. She said that staff had been prepared to make a recommendation, but that they did not have all of the relevant comments regarding stormwater. The desire was not to rush the process.

She noted that staff had received a call from Legislative Services. Senator Houck and Delegate Orrock have received a complaint from a citizen who lives in an older subdivision. The citizen had cleared vegetation in an RPA at a time when there were no erosion and sediment controls in place. The County later cited him. His complaint was that he did not receive notification of the existing RPA on the site. Staff hopes that this will not result in legislation requiring annual notice to homeowners.

Mr. Davis noted that the locality should have held a public hearing, which would be sufficient notice.

Mr. Sheffield noted that Spotsylvania does not have a wetlands board. He asked if the County was also behind on septic pump out requirements.

Ms. Smith said that the Board of Supervisors has consistently said they will not require the septic pump out. She said that she anticipated additional discussions and disagreements over this issue.

Ms. Smith noted that County staff have taken the issue very seriously and given their limitations are doing a good job.

Mr. Bulova asked if staff knew how many homeowners were affected by RPAs and what the projected financial burden would be for mailing out notices on a five-year basis. He asked if there were technical assistance funds to allow for outreach and which would include an education component.

Ms. Salvati noted that Chesterfield County received a grant to do education and outreach on RPAs. The County focused on outreach efforts with the larger water bodies. The cost

for Chesterfield was around \$11,000. Landowners received fact sheets that showed the location of the RPA. Initially there was an outcry from homeowners believing this was a new requirement until County staff was able to explain that this was existing law and that the fact sheets were for information purposes.

Ms. Smith noted that the majority of the violations in Spotsylvania are along Lake Anna.

Mr. Sheffield asked if there were funds remaining for outreach.

Ms. Salvati said that there were no available funds. DCR is using \$275,000 in Bay implementation grants for two septic pump out programs.

There was no action taken on Spotsylvania County.

Town of Colonial Beach – Update on progress

Ms. Baldwin referenced a memorandum provided to members regarding the progress of Colonial Beach. Colonial Beach does have a BMP maintenance agreement.

Ms. Baldwin noted that the Town has a lot of turnover and that the filing system on previous actions is inadequate.

Mr. Sheffield noted that when the Town's major marina burned a few years back, the ten percent requirement was difficult.

MOTION: Mr. Sheffield moved that the Northern Area Review Committee forward to the Chesapeake Bay Local Assistance Board the Interim Status Report on Town of Colonial Beach's Compliance Evaluation as presented by staff.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

Town of Occoquan – Update on progress

Ms. Mackey gave an update for the Town of Occoquan. She said she has been assured that the Town is moving forward with the recommendations and they do not anticipate difficulties with the March 2006 deadline.

MOTION: Mr. Sheffield moved that the Northern Area Review Committee forward to the Chesapeake Bay Local Assistance Board the Interim Status Report on Town of Occoquan's Compliance Evaluation.

SECOND: Mr. Duncanson

DISCUSSION: Ms. Salvati noted that the BMP databases are relevant to the Bay program modeling. CBLA staff will work with the Division of Soil and Water Conservation and work to funnel funding to affected areas along with education and outreach.

Mr. Bulova said that it was important to track BMPs to see what kind of input they are having.

Mr. Hill said that his division is working to track urban BMPs. He is working with the MS4 localities to determine how best to capture this information and to relate it back to the Bay program.

Ms. Salvati noted that what is tracked for the Bay program is not necessarily tracked for localities.

Mr. Hill said his staff is working on guidelines for tracking BMPs. He noted that the Bay program is not tracking some 3,000 BMPs.

Mr. Sheffield said that it would be helpful to determine how much pollution and sediment enters the Bay from localities above the fall line.

VOTE: Motion carried with Mr. Bulova abstaining.

Public Comment

There was no further public comment.

Other Business

There was no other business.

Adjourn

There being no further business, the meeting was adjourned.

Respectfully submitted,

Donald W. Davis
Chair

Joseph H. Maroon
Director